1948.

File No. O.L.R.C. Bom 48 pt I

Legal Dept

A BRANCH

K

Subject:— Opinions under the Bombay Land Revenue Code

R:128:9

P

O.L.R.C. Bom/48 pt I

File No.

Gen. 191

113-A

4

CONTENTS.

Legal Department File No. O.L.R.C. Dom/48 pt I

Srv No.	R. I. / O.No.	Subject	Pages
1)	875 9-1-48	The B'bay Land Revenue Code 1879. Whether there would be any objn. to Govt. setting aside the grant of land & whether Govt. is liable to pay compensation.	1.
2)	1649 13/2/48	Whether Govt. has any right to claim the judi in respect of the Kadim Land in Savnur.	3-
3)	1472 11-2-48	Sections 65 & 66 whether Govt. can levy fine under the section on Pot Kharab Land.	5-
4)	2736 20/3/48	Whether the Inamdar can be compelled to provide a free gaothan site for the villagers.	7-8-
5)	2035 1-3-48.	Whether the Inamdar, who receives the 'Himayat assessment' can be compelled to repair the tanks.	
6)	3119 31-3-48.	Sec. 211- Whether the period of occupancy can be revised so as to confirm to rule 4 of the Hope Rules of 1867 in cases of leases granted before the enactment of L.R.C.	

Sr. No.	R. I. / O. No.	Subject	Pages.
7).	3297 6-4-48.	Sec. 45. Whether dharmadia land held to be private land by court can be assessed under the	15-16
8)	968 29/1/48/	Whether Govt. can control the above question, ~~the above question~~ waste walas,	17-18
9)	A.G.No. 19 31/3/48/	Adv.General's opinion on the above question.	21-29
	3508 12-4-48.		
20)	4427 7-5-48	Sec. 48(1) -- Whether it will be possible to revise & levy non-agricultural assessment before the expiry of the period even though theland is being actually used for n.a. purpose.	31-32.
11)	4159 29-4-48	Sections 2,3, ---- Whether there would be an impedimier in revising the n.a. assersment.	33
12)	4574 12-5-48-	Sec. 45- Whether Govt. has a power to levy assessment retrospectively.	35-6
13)	264 -Confl. 27-5-48	Sec. 26 -Whether the amount dre from Shir 'X' can be rerovered as an arrear of land revenue under the ---	37.

..v.k. 10/6/56 5C.

Sr. No.	R. I. / O. No.	Subject.	Pages
14)	5066 20-5-48	Opinion given by the I.L.A. - in the matter of appeal by P.M. Pandy & Ors of Mehmedabade.	39-45.
15)	5061 20/5/48/	Whether the lease which is irregularly executed by an officer not authorised to execute will invalidate the Agant-	47-49
16)	2104 2-3-48	Sec. 211 - Whether the granted can be cancelled legally amount cancelled on account of the fact that 4 years have copsed.	51-55.
27)	4994 26/5/48/	Whether there is any statutory provision regarding an Inamdar or Talukadar to set aside any grazing land free of charge.	53.
18)	5758 9-6-48.	Sec. 38 & 39.--- Whether legislation is nec to compel Inamdar to set aside grazing lan free of charge.	55.
19)	5237 4-5-48.	Sec. 136 - Utilisation of amount of ~~xxxxx~~ remission for some public purpose -Procedurex & Procedure for the	33 57.

Sr. No.	R. I. / O. No.	Subject	Pages.
20)	8058 29/6/48/	N-A Assessment - Grant of concessaon in -----	59
21)	6015 28-6-48.	Whether there would be any legal objection to cancel theexisting leases & to resume possession of lands.	61-64
22)	351-Confl 2/7/48/	Levy of assessment on public streets.	65-
23)	6466 9-7-48	Sec. 216 -Whether a maintenance Surveyor is a village officer.	67.
24)	7035 3-6-48 7055 28-7-48	R.L.A.'s opinion on the Whether part of disused street land vestine in a Municipality and un authorisedlly used by a private firm without its sanction for a non -a and remunerative purpose is liable to the payment of n.a. assessment.	69-74.
25)	319-Confl. 21-6-48-	Whether the permission granted by the Collr. to the transfer of the holdings in anticipation of Govt. sanction is ineffective .	75-83.

Sr. No.	R. I. / O. No.	Subject	Pages.
26)	6419 9-7-48	Sec. 48--- Whether permission of the Collr. to appropriate the land for non- a purpose is neay.	85
27)	9997 9-8-48	Powers------- Collr's powers under Sec. 61, -- Delegation of to Mamlatdars & Circle Officers.	87-88.
28)	7563 11-8-48	Sec. 221 -Whether Govt. can inteffere with the orders of the Prant Officer under the	89-93.
29)	7935 20/6/48/	Sec. 202 ---- Whether a tanant can be evicted after the expiry of the lease after giving notice.	95-
30)	5898 24-6-48.	Sec. 37(2) --Whether an inquiry can be held under the section for determining the existance of foot -path	97-101
31)	6955 26-7-48.	Section 48(4) - Rule 75(2) - Pot -Kharaba lands. Whether Govt. has any right to hold inquiry re-public right of way over the land.	103-105

V.v.k. 10/6/56/

Sr. No.	P. I. / O. No.	Subject	Pages
34)	7060 / 21-3-46	Sec. 119 to 121 Pot-Kharaba land Whether Govt. has any right to fix the location of the Karar Kharaba.	111-116
35)	8116 / 23-3-46	Whether the decision of the H.Ct. in 44. B.L.R. 354 would in any way affect the rights of Govt. to the Khadi Lands at Surat.	117.
36)	8543 / 2-3-46.	Rule 73(1) - & 133 (2) Pot. Kharab lands. Whether action under the rule can be taken when the cultivation of such lands in without permission.	119.
36	9051 / 23-3-46	Whether Govt. can order the recovery by coercive measures.	121
36)	12314 / 1-10-45.	Buildings Regulations. Minimum Sizes of building plots.	123.
37)	9000 / 23-3-46.	Sec. 68(4) Whether offending part of the structure can be removed and penalty imposed.	125-127.

V.v.k. 10/6/50/

19/6

Office of the R.L.A.

Grant of land on reclamation lease Bombay Land revenue Code & rules and Govt. of India Act, 1935. R.L.A.'s opinion s Nos. 4262, d/28/4/47/ & 8569,d/23/8/47/.

It appears that the lease executed under rule 39 of the land Revenue Rules, 1921, is defective for the lease in Form G.I. is required to be executed by the Collector on behalf of the Governor of Bombay in Accordance with the requirements of sec. 175(3) of the Government of India Act, 1935 . In the present case the lease is signed by the Asstt. Collector who is not authorised to execute leases on behalf of the Governor and therefore, it is invalid (cf. R.L.A.'s opinion No. 4262, dated 28-4-1947). In these circumstances , there will be no objection to Government setting aside the grant of land. But compensation will have to be paid to Rao Sahebn Kolekar if he has incurred any expenditure (vide R.L.A.'s opinion No. 8569, dated 23--8-1947. and the opinions cited therein).

Id/- P.M.L.
dt/- 8/1/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 275

Dated the 9th ,January 1948.

V.v.k. 7/6/56/

5C.

Office of the R.L.A.

Payment of Judi in respect of Kadim Pargana Watan Lands in Sevanur State.

The view taken by P.and S.D. on the second point is correct. The Bombay Government will have no right to claim the judi in respect of the Kadim land in Savanur State and consequently the total demand from the grantee may be reduced to the extent as proposed.

With regard to the first point the Crown Representative has held tha the resumption of the Kadim lands in Savanur State was ultra vires. If these lands ~~in~~ are now excluded from the Sanad appended to G.R. of 1940 it might be argued that these lands are still under rasumption. To meeet such a contention and to restore the lands under the terms of the old sanad, the proper course would be to include these lands in the new sanad but to exempt them from the conditions imposed thereunder If this course is followed, it might be possible for the Government to claim judi even in reppect of these lands in the event of the merger of Savanur State in the Bombay Province which appears to be impending .

Id/- P.M.L.
dt/- 11/2/

Remembrancer of Legal Affairs.

G.R. to R.D. No. 1549 , dated the
13th February 1948.

V.v.k. 7/6/56/

Office of the R.L.A.

Levy of N.A. assessment on Pot Kharab land for N.A. use.

Land Revenue Code, 1879.

R.L.A.'s No. 1213 dated 30/4/1925.

The attention of the Revenue Department is invited to the Remembrancer of legal Affairs' Opinion No. 1213, dated the 30th April 1925 (printed in the preamble of the Government Resolution Revenue Department, No. 3490/24, dated 11/5/1925/) where a similar question was considered. As pointed out in that opinion it would be competent for Government to levy non-agricultural assessment on the land, but no fine can be levied under section 66 of the Land Revenue Code nor would it be possible to invoke section 65 since the land was already put to non-agricultural use before the present structure was erected thereon.

Id/- P.M.L.
dt/- 10/2/

Remembrancer of Legal Affairs.

J.R. to R.D. No. 1472 dated the 11th February 1948.

V.v.k. 7/6/56/

SC.

L.D.R.I. No. 2139 dt/-24.2.48.

Submitted.

In his report No. B.T.A.S.R. 24 dated the 10th January 1948, at p. 47 ante the Collr. of Ahmedabad has stated that the entire village of Tansa is an unsurveyed Inam Village in Gobho Taluka and that it has been ordered to be entered under the head personal inam as per Govt. Resolution R.D. No. 2032 dated 19/3/1877. As the entire village is alienated one, the Collr. stated that the village site land belongs to the Inamdar. He further stats that as the village is an alienated one, the inamdar can not be forced to provide "Gaothan" plots free to the tenants.

As regards providing free gaothan plots to villagers, the Under Secy. ,R.D. observed in his note dated 21-2-48. as follows :-

> "I think we may consult the R.L.A. on the point as to whether the Inamdar cannot be compelled to provide a free gaothan site for the villagers."

The papers are accordingly referred to R.L.A. for advice.

Id/- N.P.R.
dt/- 18/3/

A.L.R.

There is no statutory ~~provision~~ provision where under the Inamdar can be compelled to provide a free gaothan site for the villagers

Id/- R.T.K.
dt/- 19/3

R.L.A. Id/- P.M.L.
dt/- 19/3/

R. to R.D. no. 2768 dt/- 20-3-48

Office of the R.L.A.

It appears that Majigam in Chikhli Taluka, District Surat, is an Inam Village, which is surveyed and settled. In this village there are five tanks out of which four are assessed to Himayat. The petitioners, who are irrigators, complain that the three tanks are in a very dilapidated condition and request Government to require the Inamdar to repair these tanks. The Inamdar appears to be willing to bear some part of the costs of repair but not the whole,. The R.D.Office's view is that it is the responsibility of the Inamdar, who received the Himayat assessment, to repair the tanks and, on his failure to do so, Govern ent can repair the tanks and revover the costs from the Inamdar. The R.L.A. is requested to advise whether the view takin by R.D. is correct.

3. Majagam being a surveyed and sttled Inam Village, the holders of lands in he village would have the same right and be affected by the same responsibilitied in respect of the lands in their occupation as holders of land in un-alienated villages or would be affected by the provisions of Bombay Land Revenue Code and all the provisins of that Act relating to the holders of the land in un-alienated villages shall be applicable so foar as may be to them (see section 217). But the provisions of section 217 do not affect the contractual relations arising before the intrlduction of the survey in the village (see Visanlal v. Janmejai, 30 Bom. L.R. 992). It is not known whether in the present case the Inamdar was liable before the introduction of the survey to repair the tanks. If there was any liability, that liability would continue and the irrigators would be entitled

to get the anks repaired at the cost of the Inamdar. If there is no such pre-existing liability, the provisions applicable to the levy of Himayat Assessment in unalinated villages will apply. According to those provisions it appears that Himayat assessement can be levied only when water is made available for irrigation (see Gupte's Land Revenue Code, p. 336). Consequently if, by reason of want of repairs of the tanks, no water is made available for irrigation, irrigators would at the most be entitled to refuse to pay the Himayat assessment, but there is no provision in the Bombay Land Revenue Code or under any law whereby the repairing of the ta nkw could be made obligatory on the Inamdar. Consequently., the view taken by R.D. is not correct.

3. If, hhwever , Government desires to help the irrigators, the proper course would be to notify these tanks under section 5 of the Bombay Irrigation Act, 1879 , and pay compensation to the Inamdar under section 31 (see R.L.A.'s opinion No. 44 dated the 3rd January 1948).

Id/- P.M.L.
dt/- 28/2/

R. L. A.

U.R. to R.D. No. 2055 dated the 1st March 1948.

V.v.k. 7/6/56/
5C.

Office of the R.L.A.

Cancellation of sanads issued under the Code and before the enactment of the Code.

Bombay Land Revenue Code, 1879 -Sec. 211.

Rule 4 of the Rules for assessment (Hope Rules) sanctioned by G.R. No. 862 dated the 28th February 1867 issued in pursuance of section 3 of Bombay Act IV of 1863 provides that the term for which Rates of assessment will now be fixed is 99 years commencing from August 1, 1867 ,and leases granted at any subsequenty date will be of proportionately less duration. It appears that during the revision survey in Ahmedabad, this rule 4 was overlooked and some sanads in form of Schedule H have been executed under section 133 of the Land Revenue Code fixing the period of the lease beyond 1969. R.D. considers that these sanads do not seem to have been executed in accordince with the provisions of section 175(3) of the Government of India Act, 1935 and according to R.L.A.'s opinion No. 4799 dated 12-5-1947 such sanads are void and can be ignored. Since the Sanads were executed before the coming into force of the Government of India Act, 1935, that opinion of the R.L.A. is considered inapplicable. However, R.D. seems to be of the opinion that in Bulsar case, the High Court held that sanads wrongly issued in form of Schedule H under section 133 could be cancelled (See Gupte's commentary below section 133 of the Land Revenue Code under the caption "Sands once grnated could be cancelled in revision under section 211 of the Land Revenue Code"). Since there are many such cases in Ahmedabad, the R.L.A. is requested to advise whether the period of occupancy can be revised so as to conform to rule 4 of the Hope Rules of 1867 in cases of leases granted--

(1) before the enactment of the Land Revenue Code,

(2) after its enactment-

(a) before the Government of India Act , 193

- came into force, and

(b) after the government of India Act, 1935, came into force.

2. The sanad in the present case has been executed on behalf of His Excellency the Secretary of State in Council by order of His Excellency the Governor in Council of Bombay, by and under the hand and seal of the Collector of Ahmedabad. If so, this sanad is properly executed consistently with the provisions of law prevailing before the Government of India Act, 1935 came into operation. In the case considered by the R.L.A. in his opinion No. 4799 dated the 12th May 1947, the sanad, not being executed on behalf of the Governor of Bombay in conformity with the provisions of section 175(3) of the Government of India Act, 1935, the R.L.A. opined that it was invalid and that it was not necessary to cancel it. That opinion of the R.L.A. is hardly applicable to the present case since the sanad was executed on behalf of the Secretary of State in Council

3. In Dattatrya v. the Secretary of State (3 Bom. L.R. 1235) it was held by the Bombay High Court that under section 211 of the Land Revenue Code, the Collector had revisional jurisdiction over the orders passed by the District Deputy Collectors and that no period of limitation was laid down for the making of an order under this section. Following that decision that no period of limitation is prescribed for the purpose of revisional ppwers Government by G.R. No. 68102 -28 dated 15/5/1931 held that the sanads wrongly issued in form of Schedule H in respect of some Government plots under section 133 could be cancelled in revision. This is that Bulaar case to which a reference has been made by R.D. It is apparent that it is not a decision of any High Court but it is consequently the order of Govt merely an order of Government can have no binding effect in the event of its being opposed to any law. In Government of Bombay v. the Ahmedabad-Saramgpur Mills

Co. Ltd., 46 Bom.L.R. 413 and Govt. of Bombay v. Mathurdas Lali Gandhi, 44 ,Bom. L.R. 405, the High Court has held that therevisional powers of Government under section 211 would not be available for cancelling the sanads issued by Government. It therefor follows that theorders of Government in the Bulsar case are no longer valid and cannot be accepted as good law.

4. The sanad issued in the present case, though not in conformity with rule 4 of the Hope Rules, has been executed on behlf of the Secretary of State in Council and would bebinding between theparties, for a restriction imposed by rule 4 of the Hope Rules could bewaived by Government . This sanad being prpperly executed , it cannot be cancelled nor revised by Government by resorting to section 211 of the Land Revenue Code, particularly when the sanad was executed before the date of the land Revenue Code (see R.L.A.'s opinion No. 37 dated 7-1-1881). Sanads executed after the Land Revenue Code, 1879 . came into operation cannot also be cancelled by Government for the revisional powers under section 211 cannot be resorted to for such a purpose (see 46 Bom. L.R. 413 and 44 Bom. L.R. 405) provided the sanads were executed on behalf of the proper authority, namely, the Secretary of State in Council before the Govt. of India Act, 1935, came into opration or on behalf of the Governor of Bombay after the Govt. of India Act, 1935 ,came into operation.

Id/- P.M.L.
dt/- 30/3/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3119 , dated the 31st March 1948.
V.v.k. 7/6/56/ 5C.

Office of the R.L.A.

Question whether dhar ala land held to be private land by Court can be assessed under section 45 of the Bombay Land Revenue code 1879.

It appears from the sanad, at page 59 of the file, that the sanad was issued in exercise of powers vested in Government under the provisions of Bombay Act I of 1865 and Bombay Act IV of 1868, exempting the land from payment of assessment. Under section 25 of Act I of 1865, it was competent to the officer in charge of the Survey to direct that assessment shall not be levied for more than one year until the sanction of the Governor in Council shall have been obtained thereto and that it shall not be leviable from any land held and entered in the land Registers as wholly or partially exempt from payment of land revenue, except to such amount as is in accordance with the previous practice or any law which has been or may hereafter be enacted relating to lands so held.

Section 5 of the Bombay Act V of 1868 provided:-

"Clause 1. -In Towns and Cities the Collector shall, on the application of the owner or occupant, confirm existing exemptions from the payment of Government land revenue in the following cases, that is to say :-

(1) In any Town or City where there has been in former years a survey which Government recognize for the purposes of this section all lands shown in the maps or other records of such survey as beingh held wholly or partially exempt from the payment of Government land Revenue.

(2) In any town or city all lands shown on summary inquiry before the Collector to have been held wholly or partially exempt from payment of Government land revenue for a period of not less than 5 years before the application of Bombay Act I of 1865 or of this Act to such Town or City.

(3) In any Town or City, lands , for whatever period held on summary inquiry before the Collector to have been held partially or wholly exempt from paymebt of Government land revenue under a Deed of grant which Government recognises as having been competent to issue such Deed.

grant- of inquiry confirmation by an officer

"Clause 2.- A sunnud from the Collector certifying that one or other of the conditions above stated has been fulfilled shall be sufficeint proof of a riht to exemption and such sunnud shall be produced by any occupant making application under the preceding clause."

Reading these provisions together , it is apparent that land could be exempted from the payment of assessment not on the ground that certain lands were of a charitable tenure but on the customary ritht or right acquired by virtue of any provisions of law or agreement. It is clear from the sanad in the present case that the exemption from payment of assessment was granted by virtue of provisions of Bombay Act I of 1865 and Act IV of 1868 whereunder the right to claim exemption must have been recognised. That right not being based on the ground that the land was of a charitable tenure, it appears that it will not be possible for Government to revoke that exemption, for such exemptions are clearly saved by section 45 of the Bombay Land Revenue Code, 1879. Consequently, unless Government has any definite proof that that exemption was granted merely because the land was of a charitable tenure, it appears that Government will have to continue that exemption and the view taken by the Commissioner, N.D. in his endorsement at p.3 ante is correct.

Id/- P.M.L.
dt/- 5/4/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3297 dated 6th April 1948.

V.v.k. 7/6/56/

5C.

Office of the R.L.A.

By Government Resolution, Public Works Department, No. 46.W.I. - 100 dated 11-3-1884 , Government guaranteed the supply of water to the Deccan paper Mills at the rate of 10,000 c.ft. per rupee. It appeares that the Deccan Paper Mills began to use waste water for irrigation purposes. In 1889, the question arose whether the Mills could be allowed to do it and Govern ent decided that since the Mills paid full rate, they would be at liberty to make any use they like of refuse water by sale to cultivators or others. Since then, such use has been continued and the Mills have been levying water charges from the irrigators. The questions raised for the consideration of the R.L.A. are-

(1) Whether in view of the guarantee given under Government Resolution, Public Works Depart. No. 46-W.I. 100, dated 11-3-1884 , for the supply of water at the rate of Rs. 1/- for 10,000 c.ft. it is open to Government to increase the rate, and

(2) Whether Government can control the sale of waste water.

2. As far back as 1889, the true legal position was realised by Government, for on page 230 of P.W.D. Volume 180, We find it stated -and rightly- " It is a pity, power was not reserved to raise the rate or limit the supply. But the guarantee is in a form that does not allow for either . " Increase in rates seems to be out of question unless Government decides ehm to repudite the contract, relying on the decision of the Bombay High Court in the Municipal Corporation of Bombay vs. Secretary of State (I.L.R. 29, Bombay p. 880 on pages 605-606) for want of a formal document between the parties. However, in view of the fact that the gurantee given by Government for supply of water has been honoured for over 60 years, it is doubtful whether such repudiation on a technical ground would be legally feasible.

3. With regard to the second question, it may be interesting to note the statement in the preamble of

G.R. P.W.D. No. 46-W.I. -100., dated the 11th March 1884 that the mills desire to select a suitable site so that the discharge of the water of the mills can find a safe outlet into theriver. It is clear from this statement that it was not the intention of the Mills to use the waste water for any irrigation purpose. Water was guaranteed for the use of the mills, and once that water is used by thim, it ceases to be the property of the Mills and would again be theproperty of the Crown. Guaranteeing water for use of the Mills is not the same thing as conferring on the themills proprietary rights in thewaste water. Reading thepreamble with the orders contained in the aforesaid G.R. it appears that the original permission was granted subject to a particular method of disposing waste water. Under section 37 of the Land Revenue Code, all standing and flowing water not, being the property of individuals, vests in Government , and section 55 empowers Government to levy water rates for the use of such water. Consequently , Government would prima facie have the right to the waste water discharged by the Mills and can claim water rate from the ir-igators who have been using such water. The only impediment in the way of Government is theintimation issued to the Mills in 1889 that "the company pays the only impediment in the way of Government is the intimation issued to the Mills in 1889 that"the company pays the full rate and are at liberty to make any use they like of refuse water by sale to cultivators or others ".It is possible to argue that this intimation superseded the intial conditions regarding the disposal of such waste water, but themere fact that Government conceded the use by the mills of such waste water by sale to the cultivators may not be enough to construe it as an estoppel against Government.The terms in respect of the use of waste water have not been incorporated in any document executed between the parties. In the circumstances, it appears possible for Government to levy water rate for the use of waste water, and V.v.k. 7/6

in case the mills refuse to pay such rate , to stop the use of such waste water for irrigation or otherpurposes.

Since the point is of great importance, the Advocate General is requested to express his opinion.

The opinion may kindly be sent at an early date.

Ld/- P.M.L.
dt/- 28/1/48/

Remembrancer of Legal Affai

U.O. to the Advocate General, Bombay, No. 968
dated the 29th January 1948.

V.v.k. 7/6/56/
SC.

25-27

No. 19 of 1948.

Advocate General's Chambers,
High Court,
Bombay 31st March 1948.

U.O.R. to the Advocate General of Bombay,
No. 963 dated the 29th January 1948.

OPINION.

Government can repudiate the contract on the ground that the contract has not been made in the form bidding upon Government on the line of the cases beginning with I.L.R. 29 Bombay, p. 580 , but as pointed out by H.L.A. the guarantee in question has been honoured for a period of over 60 years, andrepudiation willhow be looked upon with the utmost disfavour , and would not perhaps be lega feasible. As to the use of the waste, water, there is no actual resolution so far as I can see relating to this matter, but there was an intimation to the mills which amounted to a license to them to sell waste water. The words used are that the company is "at liberty to make an use it likes of therefuse water by sale to cultivators or others". I construe this not as a contract but as a licen merely and revocable at any time. Under sec. 37 of the Land Revenue Code, water vests in Government, and sec. 55 enables Government to levy waterrates for the use of such water. This right, in myy opinion, is in no way abrogated by the permission given to the mills to dispose of the wa by sale. The contract for giving thewater to the mills was complete and there was no further consideratio- towar Government from the mills for thegrant by the Government of the liberty to sell the waste water,Government , I thi can levy the water rate for the use of the waste water.

Id/-
Advocate General .

V.v.k. 7/6/56/

Office of the R.L.A.

A copy of the Advocate General's opinion together with the statement of the case prepared for his use is forwarded herewith.

Id/- P.M.L.
dt/- 10/4/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No., 3508 dated the 12th April 1948.

V.v.k. 7/6/56/

SC.

Office of the R.L.A.

Revision of nonagricultural assessment.

Bombay Land Revenue Code, sec. 133.

It appears that a vacant plot of land bearing City Survey No. 319 of Ahmedabad was subjected to City Survey in 1941 and a sanad in the form in Schedule H to the Land Revenue Code was given to the owner of the plot fixing the agricultural assessment of the plot at Rs. 0-8-6 per annum in accordance with Government Resolutions, R&D2 No. 4729 /24 dated 2-8-1927 12-9-1930 and 29-8-1933. The holder of the plot admittedly made non-agricultural use of the plot since long before it was subjected to the agricultural assessment. In view of the fact that the non-agricultural assessment is leviable under section 65 of the Land Revenue Code, the question raised is whether such assessment can be levied now and if so with retrospective effect from 1927 when the non-agricultural use of the plot commenced.

Under section 133 of the Bombay Land Revenue Code, 1879 , every holder of a building-site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the form of Schedule H, specifying by plan and description the extent and conditions of his holding and every such sanad shall be executed on behalf of the Crown by such officer as may from time to time be lawfully empowered to excute the same. The sanad issued in the present case is in the form prescribed in Schedule H under section 133 . It has been held by the Bombay High Court in Government of Bombay Vs. Ahmedabad Sarangpur Mills Coy. Ltd. (46 Bom. L.R. 413) and Government of Bombay Vs. "athuradas LalBi Gandhi" (44 Bom.L.R. 405) that a sanad issued by Government is an agreement which is not capable of being cancessed under section 211 of the Bombay Land Revenue Code before the expiry of the term.

asequently it would not be competent for Government to modify the terms of the sanad in the present case before the expiry of the period for which the non-agricultural assessment is guranteed. It is true that under section 48 of the Bombay Land Revenue Code where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Provincial Government may prescribe in this behalf. But in Ahmedabad Ginning and Manufacturin Company, Ltd. Vs. Secretary of State, (59 Bom. L.R. 266) it was held that section 48 clause (1) of the Bombay Land Revenue Code means that the assessments are to be made in future and shall be deemed to have been made in the past with reference to the use of the lands and it may also mean that whether assessments are actually fixe with reference to the use of the land or not, they shall be deemed to have been so fixed. In the present case, when the land was assessed to agriculture, it was already used for a non-agricultural purpose. Consequentl the agricultural assessment fixed on the land shall be deemed to have been so fixed with reference to use of the land, that is to say, with reference to non-agricultural use. Consequently the decision in Ahmedabad Ginning and Manufacturing Co. Ltd. Vs. Secretary of State will apply to the present case and it will not be possible to revise and levy non-agricultural assessment before the expiry of the period even though the land is being actually used for a non-agricultural purpose.

Id/- P.M.L.
dt/- 17/5/48/

Remembrancer of legal Affairs.

U.R. to R.D.No. 4427 dated the 7th May 1948.

V.v.k. 7/6/56/ 50.

Office of the R.L.A.

Land Revenue Rules, 1921. Revision of non-agricultural assessment under rule 80A.

The attention of R.D. is invoted to sections 2 and 3 of the Bombay Land Revenue Code (Amendment) Act 1948, in view of which the High Court decision in S.A. No. 1042 of 1943 would no longer be an impediment in revising the non-agricultural assessment under rule 80A of the Land Revenue Rules, 1921.

Id/- P.M.L.
dt/- 28/4/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4159 , dated the 29th April 1948.

V.V.K. 7/8/56/

SC.

Office of the R.L.A.

Levy of Assessment retrospectively. Land Revenue Code Section 45.

It appears that the Commissioner sanctioned the lease by the Ahmedabad Municipality of a piece of land to the Burmah Shell Oil Storage and Distributing Co. on condition that the Municipality should pay part of the rent to Government on account of Government's right to sub-soil, and this rent was recovered from the Municipality retrospectively for the per period of the lease. Now after a lapse of about 11 years, the Municipality has applied for a refund of the said amount, on the strength of the Bombay High Court decision in appeal No. 766 of 1942 that Government had no power to levy assessment retrospectively. The Commissioner, N.D., observes:

the income previously received can be treated as

"On merits the claim is not justified. Government formerly levied was a share on account of the sub-soil, which is no longer admissible in view of the High Court decision. But Government is still entitled to levy assessment. The rate in respect of both being the same, the share from the assessment due to Government. The question in that case arises whether the recovery then made as on account of assessment, by passing an order under section 45 of the Land Revenue Code."

as share on account of sub-soil can now be treated as

The R.L.A. is requested to advise.

What used to be levied by Government previously on account of its rights to the sub-soil was by way of rent, and although that rent was equal to assessment ordinarily leviable under the Land Revenue Code, still the rent so levied could not be considered as assesment imposed under section 45 of the Land Revenue code. At any rate that rent cannot be now converted into assessment by passing an order under section 45 of the Land Revenue Code for, it would amount the the levy of assessment retrospectively.

Consequently the proposal of the Commissioner, N.D, does not appear to be legall feasible. In all such cases the question of limitation may have to be considered with reference to Article 16 in the First Schedule to the Indian Limitation Act. In this particular case, the claim which is made after a lapse of 11 years would be prima facie barred by limitation.

Id/- P.M.L.
dt/- 15/5/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4574 , dated the 12 the May 1948.

V.v.k. 7/6/56/

5C.

Office of the R.L.A.

In Government Resolution, Revenue Department, No. 8-110 , dated 5-12-47 , Government has apportioned the loss in respect of the Huddamal pertaining to the Court of the City Magistrate, Surat, between Messrs. B.D.Mehta (City Magistrate), B.M.Joshi (Shirastedar) and J.L. Rana (the Huddamal Clerk) in proportion of 6-3-1. As a result of this, the sum of Rs. 1132-3-7 has be recovered from Mr. Rana. It appears that Mr. Rana has since submitted his resignation which has not been accepted by the Collector of Surat (vide p. 113). As in thesaid G.R. Governmenthas not prescribed the mode of effecting the recovery from the persons concerned, the Commissioner, N.D. considers it doubtful whether action under section 28 of the Bombay Land Revenue Code can be taken for recovering the amount from Mr. Rana . The Revenue Department office also is of opinion that the amount due from Mr. Rana cannot be recovered as arrear of land revenue under section 28 of the Bombay Land Revenue Code. The R.L.A. is requested toadvise whether the R.D. office view is corect.

The provisins of sections, 25,26,27 and 28 of the Bombay and Revenue Code apply to "revenue officers" or persons formerly em-loyed as such. Mr. J.L.Rana, who was employed as Huddamal Clerk in the Court of theCity Magistrate, Surat, w as not a revenue office. Consequetnly unless Mr. Rana was formerly employed as revenue officer, it would not be legally feasible to make recovery from him as an arrear of land revenue (Cf. R.L.A.'s No. 10825dated 14/11/1947/), in which case the only remedy open to Government would be to institute a civil suit against him provided he is solvent to the extent of satisfying the decree.

Id/- P.M.L.
dt/- 26/5/

Remembrancer of Legal Affairs.

U.R. to R.D.No. 264 Confl, dated the 27th May 1948.

No.5086
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 28th May 1948.

To

The President,
Bombay Revenue Tribubal, Bombay.

Re: In the matter of appeal by P.M.Pandya and others of Ahmedabad.

Sir,

With reference to your endorsement No. Inw /22 dated the 10th February 1948, I have the honour to forward herewith the opini n recorded by me in the above case.

Id/- P.M.L.
dt/- 27/5/

Remembrancer of Legal Affairs.

V.v.k. 7/6/38/

5C.

It appears that at the time of Revisional City Survey Enquiry of Paldi in 1923, the claim of one Lalbhai Trikam was recognised by the Enquiry Office in respect of City Survey No. 469 (Comprising present C.s. Nos. 469A and 469B) and No. 472(Comperising present C.S. Nos. 472 A and 472B the strenght of the sale deed dated 26th November 1919 and old sanads a sanad in form H under sec. 133 of the Land Revenue Code was issued. Later on it was disclosed that Mr. Lalbhai's claim was in reality supported by the title deed and old sanads produced by him before the Enquiry Officer obly in respect of C.S. Nos. 469A and 472A admeasuring 73 and 18 Sq. yards respectively which were of Government ownership were dishonestly and collusively admitted by the Enquiry Officer to be of the ownership of Lalbhai. The Enquiry Officer concerned was found to be guilty of such abuse of his authority in other cases also, consequently, he was prosecuted and convicted in the Court of Sessions. The Commissioner thereupon under his No. C.T.S. 750 dated 18-1-1929 cancelled the Enquiry Officer's decision in this case and ordered to decide the claim by holding a formal enquiry under sec. 37(2) of the Land Revenue Code afresh. This inquiry was accordingly held by the City Survey Officer, Ahmedabad, who after die enquiry, decided that C.SS Nos. 469A and 472A in dispute were of Government ownership. The applicants submitted an application dated 9-3-1945 to the Collector requesting to recognize thier claim to the land in dispute on the strength of the registered sale deed dated 6-1-1926 taken

from Lalbhai after the sanad in form H under sec. 133 of the Land Revenue Code was issued by the Enquiry Officer. The Collector rejected their claim whereupon they have now appealed to the Bombay revenue Tribunal on the ground that the land in dispute has been purchased by their father under a registered sale deed on 6-1-1926 from Lalbhai and that they are in possession of the land for more than 6 years and that no notice of enquiry held in 1933 was given to them. On these facts, the Commissioner, N.D. one of the members of the Tribunal appears to be of the opinion that Lalbhai had no valid title to the land in dis pute and that frqudulent decision of the Enquiry Officer admitting Lalbhai's title to the land granting him sanad under sec. 133 of the Land Revenue Code would not be binding on Government. The other non-official member of the Bombay Revenue Tribunal appears to doubt the powers of Government to cancel a sanad issued under section 133 of the Land Revenue Code. The President of the Bombay Revenue Tribunal has made this reference to the H.L.A. for his opinion whether the Commissioner's order made prior to the enactment of the Government of India Act, 1935, in the exercise of his powers of revision under section 211 of the Land Revenue Code, quashing the Enquiry Office 's decisi-n, given under sec. 37(2) of the Land Revenue Code, amounts in effect to cancellation of the sanad granted by the Enquiry Officer in pursuance of his decision, and whether a purchaser from the Sanad holder prior to the Commissioner's order is affected by that order.

2. Under section 133 of the Land Revenue Code, 1879, every holder of a building site as a holder shall be entitled after payment of the City Survey fee to receive from the Collector without extra charge one or more sanads in the form of Schedule H or to the like effect specifying by plan and

discription the extent and conditions of his holding. Every such sanad shall be excuted on behalf of the Crown by such officer as may from time to time be lawfully empowered to execute the same. It is presumed that the Enquiry Officer who executed the sanad in the present case on behalf of the Secretary of State for India in Council was lawfully empo-wered to execute it. If so , the sanad issued by him in favour of Lalbhai was properly executed. The effected of a sanad issued unde section 133 was considered in Nabharamji Vs. Vivekramji 41, Bom . L.R. 939 , Beaument C.J. in that case observed at p. 948 this.-

> 'Tommy mind, a sanad granted under section 133 is not , strictly speaking, in thenature of a document of title between litigating parties, It is a document affecting the rights only between the Crown and the person to whom it is granted. The object of an inquiry under the Land Revenue Code is to determine theright of Government to revenue and for this purpose to survey the land and to determine who is theholder and therefor liable to assessment."

It is therefore clear that the sanad issued in the pre present case in favour of Lalbhai in 1926 does affect the rights between the Crown and Lalbhai to whom it was granted. In other words, this sanad constituted an agreement between Government and Lalbhai, and the principle enunciated by Bombay High Court in the Govt. of the Province of Bompay vs. Hormusji Nandkaji (Letters Patent No. 401 of 1938 and the Government of Bombay vs. Nathuradas 44 Bom. L.R. 405) that the powers under sec. 211 of the Bombay Land Revenue Code cannot be resorted to for cancel ling theagreement or a danad made by the Collector not as a subordinate of the Commissioner but as an agent of the Secretary of State and entered into by the Collector in that capacity with third parties will apply.The provisions of sec. 211 of the Land Revenue Code cannot be invoked for thepurpose of

cancilling the sanad. It is true that in Government Resolution No. 6802 dated 15-3-1931 it was held by Govt. that it was open to Govt. to call for the proceedings and cancel sanads wrongly issued but those orders were issued by Government long before theaforesaid decisions of the Bombay High Court were given, and it is doubtful whether orders contained in that G.R. should be treated as letally operative.

3. It appears that after the Enquiry Officer was tried and convicted, the Commissioner cancelled his decis.. in the present case andordered a fresh enquiry at which Government's title to C.S. Nos. 469B and 472B was established. It is contended that theresult of this inquiry would in effect amount to thecancellation of the sanad. This contention is not without any force for the decision of the Enquiry Officer is merge in the sanad whereby the right between the holder of the sanad and Government are determined and unless that sanad is cancelled, those rights remain unaffected-

4. It could, however, be maintained that, apart from section 211, Governmet have a right to cancel the sanad and substitute therefor another excluding from its scope the property which is now shown to belong to Government. The Officer who issued thesanad was obviously acting as an agent of Govt. He included Govt. land in thatsanad dishonestly and collusively, i.e. in collusion with the grantee Lalbhai Trikam. Even assuming that this collusive act was done by the agent within thescope of his actual authority. which position is open to seious doubt, - inasmuch as Lalbhai could not have established good faith, the agent's act in granting thesanad would not be binding upon Goverment, under the ordinary law relating to principal

and agent. Government would, therefor, be justified in repudiating that act in cancelling thee sanad , moreparticularly as Government is apparently still in possession of theland

5. The answer to thefirst question is, therefor , in the affirmative subject to the remark that thecancellation should bot be taken to be under section 211 but under the general law relating to principal and agent as explained in paragraph 4 above.

6. On thesecond question it must be pointed out that ordinarily the right to impeach a transaction on the ground of fraud has no place as against third parties, who have paid money and enquired a legal right to property, without notice of the fuaud, As against a purchaser,for valuable consideration without notice, having thelegal title, no relief can be had in equity (Kerr on Fruad and Mistake, 6th end. P. 415). In this case, however, thequestion of seeking relief against the purchaser does not arise since he is not in possession (p. 3) Thecontract upon which thesanad is based is admittedly vitiated by fraud, and thesanad is, therefor, voidable. As thepurchaser is not in possession, it would not be necessary for Govt. to avoid the transaction in a Court of law. It is for thepurchaser to seek a declaration in the Civil Court that thesanad granted to his predecessor in title is binding upon Government desipite the fraud practised by their agent,. If he succeeds in obtaining a declaration, Govt. would naturally haveto recognise his claim. It is , however, doubtful whether he would get such declaration.

7. The answer to the second question, therefore is that the purchaser would no doubt bee affected by the order, and it would be for him to establish his claim in the court of law that thesanad is binding upon Govt.

Id/- P.N.L.

Remembrancer of Legal Affairs.

V.v.k. 8/6/56/ SC.

Office of the R.L.A.

Authorisation for execution of leases.

The particular case which is the subject-matter of this reference will be covered by entry No. 4 in H.D.C.R. No. 5940/3-II , dated 1st April 1937 , if the District Deputy Collector is in charge of the land. Apart from this question the mere fact that the lease was irregularly executed by an officer not authorised to execute will not necessarily invalidate the grant, if the grant can otherwise be proved. (See Secy. of State vs. Bhagwandas 40 Bom. L.R. 29½ . In order to provide for such cases as are referred to by the Commissioner, C.D. , it will be desirable to amend entry No. 25 as in the appended draft.

Id/-
dt/- 27/5

Additional Secretary to Government.

U.R. to R.D. No. 5001 , dated the 28th May 1948.

V.vk. 8/6/56/

SC.

Revised Draft Entry.

"25 Deeds and contracts and instruments relating to land or buildings, or to any benefit arising out of land or to water, or to any benefit arising out of water or to land revenue.	In the city of Bombay, the Collector of Bombay, elsewhere by the Collectors of Districts or by the Assistant or Deputy Collectors placed in charge of the revenue administration of one or more talukas under section 10 of the Bombay Land Revenue Code, 1879, or any other subordinate revenue officers to whom the powers of a Collector, or in any business connected with the duties of Talukdari Settlement Officer or of the Salsette Development Officer by those officers respectively."

V.v.k. 8/6/56/

CC.

Office of the R.L.A.

Cancellation of grant if land given without public auction Land Revenue Code, 1879-Section ~~Code~~, 211- Rule 42(2).

Certain disforested lands in Popatpura, Taluka Godhra, were granted in 1944 by the Assistant Collector, Panch Mahals, to Mr. A.I. Bhagat on payment of Rs. 30 per acre as occupancy price under the grow more food campaign. Mr. Gajanan Kulkarni and certain other villagers have now applied to Government saying (1) that the grant was made without considering the request of the agriculturists (2) that the lands were granted at a low price (3) that the trees on lands were disposed of for a small amount of Rs. 1500/- only and (4) that he has not still constructed any house on the big plot. The Collector of Panch Mahals reports on the petition that before the grant of the lands enquiry was made whether the lands were required by any member of the Backward Class and as none had demanded the same nor had objected to the grant, the grant was made by the Assistant Collector. He also reported that the land was not subject to the condition that a bulding should be constructed and that the trees were disposed of by the Forest Department. He has now reported that the lands were cultivated by Mr. Bhagat in 1946-1947 and 1947-1948 and prior to these years they were leased to tenants. The Commissioner, N.D. states that the papers do not disclose sufficient grounds for giving out the lands to Mr. Bhagat without holding a public auction and as the grant was irregular it may be set aside. H.M.R.D. has observed that the grant is nearly four years old and as the R.L.A. should advise if the grant can be legally cancelled by Government now.

2. Rule 42(2) of the Land Revenue Rules, 1921, requires the grantee of such land to pass an agreement in form F or form H as the collector may deem

fit . Under the standing orders Government waste lands either for agricultural or nonagricultural use should be disposed of by auction and if disposed of without auction reasons should be recorded. In the present case the land was granted to Mr. Bhabat on payment of occupancy price of Rs. 30/- per acre, on condition to grow food crops for the duration of war. No agreement appears to have been taken from him as required by Rule 42(2) nor has the Assistant Collector specified any reasons for the grant of the land without public auction. The grant is therefor invalid and can be cancelled by Government under section 211 of the Land Revenue Code e er, though nearly four years have elapsed since the grant was made; (cf. Secretary of State v-. Nulkar 36 B.L.R. 242 and R.L.A.'s No. 16 , dated 2-1-47).

Id/- P.M.L.
dt/- 1/3/

Remembrancer of Legal Affairs.

U.R. to R.D.No. 2102 , dated the 2nd March 1948.

V.v.k. 8/6/56/

5C.

A.L.R.

There is no statutary provision regarding an Inamdar or a Talukdar to set aside any grazing land free from of charge.

Id/- R.T.R.
dt/- 24/5/

R.L.A. Id/- P.M.L.
dt/- 24/5/

U.R. to R.D. No. 4994 dated the 26-5-48.

V.v.k. 10/6/48/

50.

Office of the R.L.A.

Setting aside land for pasturage by Inamdars. Bom. Land Reve. code, 1879, sec. 38, 39.

In his opinion No. 2783, dated the 20th March 1948 the R.L.A. held that "there is no statutory provision whereunder the Inamdar can be compelled to provide a free gaothan site for the Villagers". In his opinion No. 4994, dated the 26th May 1948 the R.L.A. held that there is no statutory provision requiring an Inamdar or a Talukdar to set aside any grazing land free of charge. Consequently, in the present case also it would not be possible to give effect to para. 7 of Govt. Circular No. 3499/45-II dated 27th June 1947 unless statutory provision is made for the purpose. In Vinayakrao v. Secretary of State 23 Bom. 39 at. P. 46, Ranade J. observed that section 38 and 61 of the Code have no application in the case of lands belonging to Inamdars because they relate only to Govt. lands and they confer no power on Government to interfere with the private rights of the inamdar to use his property in the way most advantageou to him. Consequently to achieve the object in view legislation would be necessary and the form of legislation would be determined after Govt. takes decision in the matter.

Id/- P.M.L.
dt/- 19/6/

Remembrancer of Legal Affairs.

U.R. to R.D.No. 5737 dated 19th June 1948.

Office of the R.L.A.

The benefit of remission of 10 per cent. of land revenue sanctioned by Government under G.R. R.D. No. 5547/4 dated 8th August 1947 would , in the first instance, go to the landlords who under section 136 of the Bombay Land Revenue Code, 1879 , are primarily liable for the payment of assessment although such benefit will ultimately have to be passed on to the tenants under section 84-A . Ordinarily it would not be legally feasible for Government to collect the whole assessment from the landlords ignoring the remission order dated 8-8-1947 and then to set apart 10 percent . of such collection for the benefit of the villagers or the tenants in general..If, however, the landlords and the tenants agree in writing that the amount of the remission should be pooled together an utilized for some public purpose in the village, it would not be illegal for Government to issued executive instructions to their Revenue Officers for handing over to them or to their accredited representatives one.tenth of th recoveries of the total demand of land revenue from the village.

Id/- P.M.L.
dt/- 5/8/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5247 , dated the 4th June 1948.

Under the provision s of rule 43A of the Bom. Land Revvenue Rules, short term leases are being given in the Bombay Suburban District on payment of rent eupal to twice thenon-agricultural assessment for construction of temporary structures. The requisite lease is executed in Form O-O(1) approved by Govt. It is stated that the leasees have constructed temporary structures at their own expense on thelands leases to theim and have sub-let a portion or portions of these structures to intending tenants in contravention of condtion 7 of the lease in form O-O(1). In theR.D. office note dt. 11-6-48 it is proposed that there would no legal obejection to cancel theexistion leases and to resume possession of the lands and then to lease them to sub-tenants if they are in genuine new of them. The R.L.A. is requested to advise whether the R.D. office suggestion is legally feasible.

Seen and returned

Id/- P.K.L.
dt/-

Remembrancer of Legal Affairs.

U.R. to R.D.No. 8015 , dated the 28th June 1948.

V.v.k. 8/8/58/

SC.

Office of the R.L.A.

Assessement of street

Bombay Land Revenue Code 1879.

The view expressed in sub-para . (5) at page 49 ante is correct.

Para. 2 of Government Resolution No. 1788 , dated 25th August 1924 may be ~~deleted~~ modified as follows :-

It is not necessary to await the extinction of the Municipality's rights or of its declaration as said by theR.L.A. in the concluding part of his opinion. Steps may be takfn to levy assessment immediatly theem encroachment is detected.

The presumption made in the remarks column against serial No. 21 in the Appendix F is confirmed.

Serial No. 4 in Appendix F :

Even part (b) of Government Resolution may be cancelled as it is lekely to create a wrong impression that in some cases public streets vesting in a municipality revert to Government.

Serial No. 17 :-

The year of theGovernment Resolution should be 1940 instead of 1947.

Serial No. 18 :-

In (1) for thewords "vesting in Government" substitute "vesting in municipality".

Id/- P.M.L.
dt/- 1/7/

Remembrancer of Legal Affairs.

U.R. to R.D.No. 351-Confl. dated the 2-7 - 1948

V.v.k. 8/8/56/ 5C.

Office of the R.L.A.

Bombay Land Revenue Code sec. 216.

Whether a maintenance surveyor is a village officer.

The view taken by the Commissioner, C.D. is correct .Although the expression "village Officer" in section 216(1)(iii)(a), L.R.C. has not been defined in the Code, it will have to be interpreted in the light of section 16. Compare the definition in Bombay Act IV of 1861. Consequently that expression would not include a maintenan e surveyor.

Id/- P.M.L.
dt/- 9/7/

Remembrancer of Legal Affairs.

U.R. to R.D.No. 6466 ,dated the 9th July 1948.

V.v.k. 8/6/56/

SC.

No. 7055.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 28th July 1948.

From

P.M.Lad, Esquire, I.C.S.
Secretary to the Government of Bombay,
Legal Department.

To,

The President,
Bombay Revenue Tribunal.

Subject :- Levy of non-agricultural assessments on disused street land vesting in Ahmedabad Municipality.

Sir,

With reference to your letter No. Ppws/15, dated the 23th May 1948, on the above subject, I have the honour to state the Bombay High Court in the Government of the Province of Bombay v. Dathiara Kalubhai (S.A. No. 1042 of 1943) held that rule 80A of the Bombay Land Revenue Rules, 1921 is ultra vires on the ground that the rule takes life from sections 102 and 103 of the Bombay Land Revenue Code, 1879 and on the repeal of the former and the amendment of the latter sections Rule 80-A has no life. Since there was no provision in the Code empowering Government to revise the non-agricultural assessment after it was once fixed, it was found necessary to amend the Code for the purpose so that the non-agricultural rates may be revised consistently with the rise in value of non-agricultural lands. Accordingly, by the B.L.R.C.(Amdt.) Act 1948 (Published in the B.G.G. on 16th-4-48) and the amdt. section 12 of the Code was amended and was given retrospective effect from the 19th October 1939. But as pointed out above these rules relate to revision of non-agricultural assessment after it was once fixed and have no bearing on this case. The question

whether part of a disused street land vesting in a Municipality and unauthorisedly used by a private firm without the Municipality's sanction for non-agricultural andremunerative purpose is liable to thepayment of non-agricultural assessment or not has been fully considered in the R.L.A.(s opinion No. 358-Confl. dated the 22n. November 1944, a copy ofwhich is sent herewith.

2. Thepapers of the case are returned herewith.

Yours Faithfully,

Id/- P.M.L.

Remembrancer of legal Affai...

V.V.k. 8/6/56/

5c.

Office of the R.L.A.

With a view to start the new Cement Works at Sevalia the Manager of the Associated Cement Co. Ltd. Bombay, arranged to purchase certain occupiede lands at Pali by private negotiations with the occupants. Out of the lands proposed to be acquired by the Associated Cement Co. Ltd. there were certain lands held by theoccupants on the new tenure . In respect of these lands held on thenew tenure, theCollector of Kaira in his letter No. L.N.D. dated the 28th June 1947 stated :-

" In view of thcorders contained in para 2 of the Government Memorandum, R.D. No. 7909-B/33/28750 dated 27th December 1941 , the sale is not permissible and circumstances, I would request Government to permit the sale in this case as a special case at an early date. As the matter is very urgent and as the Associated Cement Co. want to have constructions on these lands before the monsoon which is fast approach I am directing the Mamlatdar, Thasra to ask the occupant of these new Tenure lands to hand over possessio at once to the Associated Cement Co. in anticipation of sanction from Government. My actidn in doing so may, therefor, please be approved."

In his endorsement No..L.N.D. 461 dated the 19th July 1947 the Commissiner, Northern Division recommended that instead of the permitting the occupants to sell their New Tenure lan and then taking proceedings for the conversion of the tenure, the proper course would be to allow the present occupants to convert their lands to Old Tenurete to enable them to effect their sales on more advantageous terms. By Government letter No. 7907/35537 -B dated the 5th August 1947 , Government accorded its approval to the action taken by theCollector of Kaira in directing the Mamlatdar of Thasra to ask theoccupants to hand over possession their lands to the Associated Cement Co. Ltd. in anticipation of Government sanction and informed theCollector that permission to sell should, in this case, be given to the occupants subject to the condition that the value paid the Company for thelands should be shated equally between the occupants and Government, The Collector was direct to make this position clear both to these occupants and

the Company and to take steps to recover the Government share of the purchase money in respect to these lands. The Collector in his letter dated 8th May 1947 has reported that at the time of taking possession of the said land, the Company paid to the occupants full value amounting to Rs. 3,28,040/- and that the occupants concerned were pursuaded to pay the Governments half the share of the said price to Government but none paid it. Government, however, informed the Collector that steps should be taken to give effect to Government orders as best as practicable and that he should make endeavour to recover the Government share. The Collector consulted the District Government Pleader, Nasik as to whether Government's said share could be recovered by resorting to coercive process under the Bombay Land Revenue Code. The District Government Pleader opined that such action would be legally valid. The Collector is not however, satisfied with the District Government Pleader's opinion and has requested Government to obtain the R.L.A.'s opinion. Consequently, the papers are forwarded to the R.L.A. for his opinion.

2. Under the proviso to section 88 of the Bombay Land Revenue Code, 1879, it is lawful for the Collector, at any time to grant permission to any person to occupy any un-alienated un-occupied land for such period and on such condtions as he may, subject to the rules made by the Provincial Government in this behalf, prescribe. Under sub-rule (3) of Rule 37 of the Bombay Land Revenue Rules when land is granted on un-alienable tenure, the clause specified in form I shall be added to the agreement clause 4 in form I provides "that said land has granted to me subject to the conditions to which assent namely that I, my heirs, executors, admirable and approved assigns may not at any time, lease sell or otherwise however encumber the said land or and portion thereof without the previous sanction in writing of the Collecotr." The lands in the present case were

V.v.k.

granted under the proviso to section 68 read with rule 37 and agreements in Form I were taken from the occupants. It is , therefore , clear that the rights and liabilities of Government and occupants of these lands would be determined by the terms and conditions contained in the agreements in Form I taken from these occupants. Section 8 provides that the Collector shall exercise all the powers and discharge all the duties conferred or imposed on him by this Act or by any other law for the time being in force and in all matters not specifically provided by law, shall act according to the instructions of the Provincial Government. The transfer of the lands held on New Tenure by these occupants could not, according to the terms of the agreement, be made save with the consent in writing of the Collector. The consent of the Collector to the transfer of these holdings could be granted or with-held not by virtue of any of the powers conferred on him by the provisions of the Land Revenue Code but by virtue of the terms and conditions of the grant itself. Consequently, in granting consent to the transfer of these holdings, the Collector would be bound by the instructions issued by the Provincial Government under section 8. By Government memorandum R.D. No. 7907-B/28750 dated the 27th December 1941 , Government directed the Collectors not to give consent to the transfer of holdings held on New Tenure without the previous sanction of Government. Consequently, the Collector in the present case, could not give sanction to the transfer of these holdings without the previous sanction of Government and it was for this reason that the Collector approched Government for sanction. The permission granted by the Collector to the transfer of these holdings in anticipation of Government sanction was not warranted by law and as such ineffective.

3- The next question for the consideration of the L.A. would be whether in granting sanction to the transfer of the holding, Government could impose a condition that Government and the occupant should share equally the price of the land

It may be argued that the prohibition of transfer of these holdings without the previous consent of the Collector was a restraint on alienation and as such illegal under section 10 of the Transfer of Property Act. But under section 2 of the Crown Grants Act, 1895 , nothing in the Transfer of Property Act shall apply to any grant or transfer of land or on any interest therein herwtofore made or hereafter to be made by the Crown in favour of any person shomsoever and that every such grant or transfer shall be construed and take effect as if the Transfer of Property Act had not been passed. Consequently, the condition of inalienability imposed under the agreement is vali It may also be contended that Government in granting sanction were not entitled to impose the condition of payment of any consideration . It is true that under the English law, if consent to the assignment of a lease is refused except on payment the lessee is entitled to assign without consent but that is based on an express provision in the Conveyancing Act, 1892 and the law of Property Act, 1925. Those condiderations, therefor, have no application in the present case and it would be law ful for Government to impose such condition.

4. The 3rd question for considerati n would be whether it would be lawful for Government to recover by duress Government s half sha e in the price paid to t he occupants. Under section 187 , of the Land Revenue Code, all sums due on account of land revenue, allquit rents, Nazaranas, succession duties, transfer duties, forfeitures and all cesses, profits from land, emoluments, fees, charges, penalties, fines and consts payble or leviable under any Act for the time being in force this Act or under any Act or Regulation hereby repealed or under relevant to land revenue shall be levied under the provisions contained in Chapter XI. Section 150 in Chapter XI prescribes the process for recovery of arrears. Government's half share to be recovered in the present case is not a transfer duty because a duty im lies a levy under a law. "Land Revenue" has not been defined in t he Code. In Junabai Vs. the Collector, 28 Bom. L.R. 416 at p. 418 McLeod, C.J. observed:-

" It is true that land revenue in section 150 cannot be restricted to one particular kind of land revenue, that is to say, assessment, so that if any other kind of revenue from land is payable to Government by any person on account of anyland held by or vested in him and he falls into arrears in payment of such revenue, it cannot be recovered from him under section 150".

Land Revenue as defined in section 3 of the Bombay Revenue Jurisdiction Act, 1876 means all sums and payments in money or kind received or claimable by or on behalf of the ~~money or kind received or claimable by or on behalf of the~~ Crown from ~~any~~ any person on account of any land held by or vested in him and any cess or rate authorised by the Provincial Government under theprovisins of anylaw for the time being in force.This Expression signifies any sum of money legally claimable by the Provincial Government from any person on account of any land, interest or right exercisable over land held by or vested in him under whatever designation.Any such sum may be payable as land revenue ~~XXXX

Office of the R.L.A.

Inam land alienated- Permission of Collector appropriate land for purpose by- the alienee Bombay Land Revenue Code 1879- Section 48 & Rules 92-98.

Khasbag is a personal Inam village in Belgaum District which was granted revenue free in the year 1857 to one Motoo Koomar Mudaliar. Survey No. 46 of that village was sold in public auction in execution of a decree by the First Class Sub-Judge, Belgaum, in the year 1921 to one Mr. Datar of Belgaum, who subsequently sold it to one Mr. Savitribai Kalibal in 1933. Since then she is in occupation of the land but is not paying assessment either to the Inamdar or to Government on the ground that her vendor purchased the right, title and interest of the Inamdar in the land in the auction sale. She has now applied to the Collector enquiring whether permission for using the land for non-agricultural purpose is necessary and, if so, whether non-agricultural assessment is leviable thereon. The Commissioner, Southern Division, states that Khasbag being a surveyed Inam village, the alteration of assessment under section 48 of the Bombay Land Revenue Code, 1879, is governed by Rules 92 to 98 of the Bombay Land Revenue Rules and hence the permission of the Collector to appropriate the land for non-agricultural purpose is necessary. He has further stated that as Savitribai has purchased the right, title and interest of the Inamdar in the land, she is not liable to pay non-agricultural assessment thereon. R.D. agrees with the view of the Commissioner and requested R.L.A. to advise in the matter.

2. Since Khasbag is a surveyed and settled alienated village, the holders of all lands in that village are by virute of section 217 of the Bombay Land Revenue Code entitled to the same rights and are affected by the same responsibilities in respect of the lands in their occupation as holders of land

in unalienated villages. Rules 92 to 103 of the Bombay Land Revenue Rules regulate the alteration of assessment in surveyed and settled alienated villages. It is apparent from rules 94, 95 and 96 that the permission to the holders of lands to convert their lands for non-agricultural purpose can be granted only when the Inamdar agrees and the alteration of the assessment would go to the benefit of the Inamdar. These rules contemplate the alteration of assessment and the permission for the conversion of the land to non-agricultural purpose only when the applicant is the holder of such land within the meaning of section 217 of the Bombay Land Revenue Code. In section 217 the word "holders" refers to inferior holders (see Nilaji vs. Nagindas, A.I.R. 1933, Bom. 163). Mrs. Savitrabai who claims to have purchased the right, title and interest of the Inamdar in the land, does not pay any assessment to the Inamdar. This right of hers is not disputed. She can therefore be considered a superior holder within the meaning of section 3 clause (13) and not a holder within the meaning of section 217. Consequently she would be entitled to all the rights and benefits of the Inamdar in respect of the land. Rules 92 to 103 of the Bombay Land Revenue Rules would , therefore, be inapplicable and Mrs. Savitribai would require no permission of the Collector to convert her land for non-agricultural purpose, nor would it be necessary to levy non-agricultural assessment of the land under rule 92.

Id/- P.M.L.
dt/- 8/7/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6419 ; dated the 9th July 1948.

V.v.k. 8/6/56/ 5C.

"The T.H. Barkun has passed his order under section 87(2) of the Land Revenue Code and not under the Bom-Tenancy Act. Govt. has therefore, no revisional powers under section 28 of the B.T. Act to revise the order. Govt. can, however , revise the order under the revisional powers conferred under section 211 of the L.R. Code . But as pointed out by the Commr. and the Collr. the orders passed by the A.A.C. and the P.O. are proper andneed no interference. It is , however, open for the applicant to approach the Civil Court which is competent to grant relief to him (vide sect. 87(4)). It is, therefore, not desirable to entertain the revision application and the applicant may be directed to approach the civil Court in the matter".

The R.L.A. is requested to advise whether the view expressed above is correct.

Office of the R.L.A.

Seen and returned

Id/-

Additional Secretary to Government.

U.R. to R.D.No. 7563 , dated the 11th August 1948.
(Please also see R.L.A.'s opinion No. 9532
dated the 9-10-48.)

V.v.k. 8/6/56/

5C.

Office of the R.L.A.

Bombay Land Revenue Code, 1879.

Eviction after expiry of lease.

The lease having already expired, steps may be taken to evict under the Bombay Land Revenue Code 1879, Mr. Indrasing and even Mr. Hammant if found in possession of the land, after proper notice under section 202 of the Bombay Land Revenue Code.

Steps may also be taken to recover under sec. 187 of the Bombay Land Revenue Code the arrears of rent from Mrs Hammant for the year 1946-47. No civil suit would be necessary."

Id/- P.M..L.
dt/- 18/8/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 7935, dated the 20th August 1948.

V.v.k. 8/6/56/

5C.

Office of the R.L.A.

In the first case it appears that there is a foot -path passing over Pot Kharaba lands comprised in Survey Nos. 2/3/,2/9 and 2/2-10 of Lakhanpur village, taluka Bardoli. This part of foot-path is claimed by the villagers but the occupants of the aforesaid Survey numbers are denying the existance of any such foot-path. The question raised for the consideration of the R.L.A. is whether an inquiry can be held under section 37(2) of the Bombay Land Revenue Code.

2. Under section 37(2) of the Bombay Land Revenue Code, an inquiry can be held in cases where any property or any right in or over any property is claimed by or on behalf of the Crown or by any person as against the Crown. Under sub-section (1) of that section, all public roads, lanes, paths etc. wherever situated and which are not the property of individuals, or of aggregates of persons legally capables of holding property, and except in so far as any rights of such persons may be established in or over the same and except as may be otherwise provided in any law for the time being in force are and are hereby declared to be with all rights in or over the same or appertaining thereto, the property of the Crown and it shall be law ful for the Collector etc. to dispose of them in such manner as he may deem fit etc, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting. This provision was considered by Divatia J. in Nawab Sardar Narsinghji Ishvarsinghji Vs. The Secretary of State for India (43 Bom. L.R. p . 167) where he held. :-

> " The existence of a highway or a public road is consistent with the ownership of a private person in the soil. There is a presumption that a highway or waste lands adjoin ing thereto belong to the owners of the/adjoining lands. Hence (/~~soil of the~~) the use of the road by the public for passage as of right is not inconsistent with the proprietor- ship of a private individual to the soil of the road. v.v. 8/

> A road, therefore, cannot be said to be the proper of Government merely because it is used by the public The words "which are not the property of individuals' in section 37 of the Bombay Land Revenue Code, 1879 , are not confined in their application to all lands whatever situated but also apply to roads, bridges, beds of sea, lakes , tanks etc. Similarly the words "except in so far as any rights of such persons may be established" govern all the previous expressi and not merely lands. The words "are hereby declared to be the property of Government " in section 37 do not take away the rights which existed when the section became law. "

Pot Kharaba land in a survey number, though unassessed and though prohibited for use is still the property of the occupant (see rule 75 of the Bombay Land Revenue Rules). In the present case it is admitted that the foot-path passes over the Kharabi land included in Survey numbers. Consequently, the foot-path though subject to the rights of the public to pass over it, would still be of the ownership of the occupants through whose lands it passes. At any rate, it is not the property of Government within the meaning of section 37(1) of the Bombay Land Revenue Code. If it be not the property of Government then sub-section (2) of that section will have no application and no inquiry can be ordered .The view taken by the Commissioner, N.D. is correct . The decision of the Bombay Revenue Tribunal in B.R.T. No. 897(O-44) may be distinguishable in so far as it relates to the question of sanction the diversion of the road. Since, however, this point about the legality or otherwise of holding an inquiry under section 37(2) was not raised, that decisions such right.

3. The point raised in the second case is whether the Collector can grant permission to cultivate land falling under clause (b) of Rule 75(1) of the Bombay Land Revenue Rules. Sub -rule (2) of Rule 75 of the Bombay Land Revenue Rules provides that cultivation of lands fal ling under clause (b) is hereby prohibited under section 48(4).

Sub-section (4) of section 49 of the Land Revenue Code provides that the Collector or a survey officer may, subject to any rules made in this behalf under section 214, prohibit the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose. Apparently, this is an enabling provision and cannot be construed as a disability. Consequently, it would be open to the Collector to withdraw the prohibition and allow cultivation xxxxxxx of the Pot Karoba land falling under clause (b) of Rule 75(1) of Rule 75(1) and levy assessment.

Id/- P.M.L.
dt/- 22/6/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5898 dt/- 24th June 1948.

V.V.K. 8/6/56/

SC.

Office of the R.L.A.

Pot-kharaba Land.

Land Revenue Code, 1879 Section 48(4) Rule 75(2).

It appears that S.No. 299 of Katargam, ------ Chorasi, Surat District, formerly formed a compact block having a 'marag kharaba' of 5 Gunthas. That Survey No. was subsequently sub-divided and the sub-divisions are now in possession of different persons. The marag-kharaba of 5 Gunthas was distributed among Hissa Nos. 1,3,4,6, and 7 of S.No. 299. Gulabbhai Durkabhai a tenant of S.No. 299/3 and 299/7 claimed the right of way through S.No. 299/1 to his Survey Nos.The Collector of surat pointed out that from the extracts of Village Form I of S.No. 299, it appeared that there was a 'marag kharaba' of 5 gunthas distributed equally in hissas 1,3,4,6 and 7 of S. No. 299 but that 'marag kharab' was not shown in the village map of S.No. 299. He also pointed out that the dispute about this right of way through S.No. 299/1 was finally settled by the decision of the Bombay High Court and the claim to the right of way was negatived. On the recommendation of the Commissioner, C.D. Government, however, directed the Collector to fix the exact location of the 'marag kharaba' with the help of the Survery department. The Collector pointed out that it was not possible to fix the exact location of the marag kharaba. However, he was directed by Government to fix the location of the marag kharaba along the western boundary line of S.No. 299/1 and to keep it open for the use of the public. The occupant of S.No. 299/1 has now requested Government to revise those orders and has produced copies of judgments of the Assistant Judge, Surat and of the High Court which held that the 'kharaba(is only a

V.vk. 50.

passage for water and did not mean that there was a right of way through it. Assistant Secretary, R.D. states that since Government was not a party to the litigation, the decision of the Court is not binding on Government and therefore the location of the 'kharaba' on the basis of the village records may be made. He also states that the Court's view that 'marag' kharaba may indicate water way is incorrect because 'marag' means way and 'water' ways' are usually called as 'nala' and 'kana'. In any case according to him, rule 75 of the Bombay Land Revenue Rules prohibits the occupant of S.No. 299/1 from cultivating the 'kharaba' to the detriment of the rights and interests of other occupants. The R.L.A. is requested to advise whether in the circumstances, the orders issued by Government to the Collector to fix the location of the 'marag Kharaba' in S.No. 299/1 are legally in order.

A similar point was recently considered by the R.L.A. in his opinion No. 5893, dated 24th June 1948. Relying on the decision of the Bombay High Court in Nawab Sardar Sarharsinghji Ishwarsinghji vs. Secretary of State for India, 43 Bom. L.R. 167, the R.L.A. in that opinion held that 'pot' kharaba' land in a survey number through unassessed and though prohibited for use was still the property of the occupant and the Government having no interest in such land had no right to hold any enquiry under sub-section (2) of section 37 of the Bombay Land Revenue Code regarding the public right of way over it. That opinion equally applies to the present case, when the dispute relates to the right of way or a 'kharaba' land included in an assessed survey number.

V.v.k. 10/6/56/

SC.

Since Pot kharaba land included in a survey number assessed for the purposes of agriculture belongs to the occupant, any dispute with regard to the right of way over such kharaba land would be a dispute between the occupant and the adjoining owners or the public in general. It would be a matter for occupants and ~~it~~ disputants to have the dispute settled either amicably or through Court. Government has no right to interfere in such dispute under the provisions of the Bombay Land Revenue Code. That being, so, the question whether Government was or was not a party to the previous litigation between ~~the~~ the occupants of S. No. 299/1 and 299. Pot Hissas 3 and 7 is not material. In that litigation the dispute has been finally settled and the occupant of S.No. 299. Pot Hissas 3 and 7 has been held to have no right of way through S.No. 299/1. That decision would be binding on the tenant of that land Gulabbhai Durlabhbhai and it would not be open to him to reagitate and claim a right of way over S.No. 299/1. It is true that the Pot-Kharaba in S.No. 299/1 does not seem to have been assessed and the cultivation thereof is prohibited under section 48(4) of the Bombay Land Revnue Code (See rule 75(2) of the Bombay Land Revenue Rules). But as pointed out by the R.L.A. in his opinion No. 5898, dated 24th June 1948, sub-section (4) of section 48 is merely an enabling provision and cannot be construed as a disability. Consequently it would be open to the Collector to withdraw the prohibition to cultivate the pot kharaba land falling under clause (b) of rule 75(1) and levy the assessment. However, this point is immaterial in view of the clear decision of the Bombay High Court which we ought to respect. Government should, therefore, rescind the orders issued in Government letter No. 576-B/45, dated the 3rd June 1948, directing the location of the 'marag Kharaba' in Survey

V.v.k. 10/6/66/

No. 299/1.

Id/- P.N.L.
Remembrancer of Legal Affairs.

U.R. to R.D. No. 6955 , dated the 26th July 1948.
(Pl.also see R.L.A.'s opinion No. 7933, dated 21-8-48)

V.v.k. 10/8/56/
50.

Office of the R.L.A.

Pot-kharaba land. Land Revenue Code, 1879, Secs. 48(a) rule 75(2).

The Assistant Secretary, R.D. in his note at pp. 65 to 67 ante appeats to have confused the prescriptive ritht of an adjoining owner of a land to pass and re-pass over road pot-kharaba land included in the Survey number with the right to cultivate such pot-kharaba land by the owner of the Survey number in which such land is included. The brief in Surat Civil Suit No. 321 of 1947, which was prepared by the R.L.A. relates to the cultivation of a pot-kharaba land falling under clause (b) of rule 75(1) of the Bombay Land Revnue Rules. In that case the owner without the previous permission of the Collector commenced cultivation of the pot-khabara land which was reserved for road. Consequently the right to use such land without the previous permission of the Collector could be chall-enged. In the present case, here is no question of the owner of S.No. 299/1 using the pot-khabara land. The point in dispute is whether notwithstanding the decision of the High Court negativing the prescriptive ri ht of the owner of S.No. 299/3 and 299/7 to the right of way through S.No. 299/1 Government can have any right to fix the location of the marag k araba in S.No. 299/1 as ordered by them. The marag kharaba has not been shown in the village map of S.No. 299-. The Collector has pointed out that it was not possible to fix the exact location of the marag kharaba. If the exact lication of the marag kharaba cannot be determined, it is difficult to understand how the prescriptive right of an adjoining owner to use such marag kharaba could be established. Reading rule 75 with section 48(4) of the Bombay Land Revenue Code, it is apparent that Government can prohibit the use of the pot-kharaba land falling under clause (b) of rule 75(1) for cultivation. But there is nothing in those provisions which can compel the owner of the Survey number to keep the marag kharaba or recognised foot-path

open for use to the adjoining owners. Whether the adjoining owners have a prescriptive right to the use of such marag kharaba so that they could force the owner to keep it open would be a matter between such adjoining owners and the owner of the pot-kharaba land. It is, therefore, apparent that all that the Government can do in the present case would be to prohibit the cultivation of the pot-khabara land in S.No. 299/1 . But there is some difficulty even in respect of such prohibition, for the exact location of the marag kharaba land cannot be determined in which case it would be impossible for the Collector to determine which portion of the land hould not be cultivated. In the circumstance, the proper course would be to grant permission to cultivate the land and impose full assessment on the marag kharaba land.

Secretary, R.D. has requested the R.L.A. to consider this case with reference to R.D.'s right and liability to settle the boundaries and boundary disputes with reference to the available land and survey records, sections 119 to 121 of the Land Revenue Code.

Sections 119 to 121 of the Bombay Land Revenue Code apply merely to boundary disputes i.e. disputes as to the position of boundary and rights which depend upon and follow from the position of a boundary. They do not touch the rights acquired over the land by any other means such as transfer or prescription (See G.R.R.D.No. 7859 of 27-6-1917 p. 665 of Gupte's Land Revenue Code.) In the present case, there is no question of any boundary dispute. What is claimed is a right of way over S.No. 299/1 by the owner of adjoining S.No. 299/3 and 299/7 . In other words this claim amoints to a prescriptive right which would not be boundary dispute. Consequently sections 119 to 121 of the Bombay Land Revenue Code

will have no application.

Id/- P.M.L.
dt/- 20/8/

Remembrancer [illegible]. Legal Affairs.

U.R. to R.D No. 7969

dated the 21st August 1948.

V.v.k. 10/8/50/

50.

Office of the RL.A.

Ownership of khadi lands at Surat.

It is presumed that the terms offered by Government in Government Letter, Revenue Department No. 764-B/39-3692, dated 24th March 1941 were accepted by the Surat Municipality. If so, the decision of the Bombay High Court in 44 B.L.R. 354 would in no way affect the rights of Government to the Khadi lands at Surat evenn though some of them were not the subject matter of Surat Civil Suits, Nos. 975 and 976 of 1926 and 8 of 1927.

Id/- P.M.L.
dt/- 24/8/

Remembrancer of Legal Affairs.

U.R. to R.D.No. 2116 , dated the 25th August 1948.

V.v.k. 10/6/86/

5C.

Office of the RL.A.

Land Revenue Code and Rules. Rules 73(1) and 133(2).

Authorized cultivation of Pot-kharaba.

If a pot-kharab falling under clause (b) of rule 75(1) of the Bombay Land Revenue Rules, 1921 is brought under cultivation with or without permission, there would be no legal objection to assessing it ever during the currency of the settlement (see G.R. R.D.No. 3903 dated 10-4-1916). But no fine can be levied under the provisions of the Bombay Land Revenue Code. Action under rule 133(2) of the Bombay Land Revenue Rules would be possible only when the cultivation of such kharab land is without permission.

Id/- P.M.L.
dt/- 4/9/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8543
dated the 9th September 1948.

V.v.k. 10/6/56/
60.

Office of the R.L.A.

Bombay Land Revenue Code, 1879.

Coercive process for recovery of Government's share.

R.L.A.'s opinion No. 319-Confl. dated 21-6-1948.

In view of the fact that the legal position is not entirely free from doubt and that the issue of a coercive process may lead to further complications, Government may await the institution of suits and in the event of such suits not being instituted within a reasonable time Government may order the recovery by coercive measures.

Id/- P.M.L.
Stf- 22/9/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9051 , dated the 23rd September 1948.

V.v.k. 10/6/56/

50.

Submitted.

In 1939 Pitambar Govind sable(District Ratnagiri) was granted a sanad in Form M attached to the Land Revenue Rules for constructing a motor garage in S.No. 79/1 of Camp Dipoli, Taluka Dapoli. The relevant special conditions of the Sanad are that :

(1) only portion marked E.F.C.D. in the map therein should be built up and the remaining area to be kept open.

((2) & 7)portion marked A.B.E.F. should be let open to the say (which should be 10 feet from the road)

(5) the building erected on the said plot shall be used for residencal purposes ohly.

Under condition 6 thereof the Collector has been authorised to direct the removal or alteration of any byilding or structure erected or used contrary to the provisions of the grant within a time prescribed by him and, on such removal or alteration not being carried out within the prescribed time the may cause the same to be carried out and may recover the cost of carrying out thesamo as an arrear of land revenue.

Mr. Sable had in pursuance of his Sanad built up a motor garage. He however demolished the original garage and has built up a residential bungalow of a bigger size than what he was authorised under thesanad. He has now left open only 8½ feet on one side and 7½ feet on the other from the road. Under directions of the Prant Officer, Chiplun, the Mamlatdar of Dapoli, therefore, served a notice under section 202 of L.R.C. to pull down the building. Against this or er Mr. Sable appealed to the Collector Ratanagiri. The Collector in his report (through the Commissioner, S.D.) considers that the action of Mr. Sable in building a residential house

constitutes a breach punishable under sect on 48 L.R.C. and that he is leable to be sumarily evicted under section 66. The Commissioner S.D. however considers that neither penal action under section 66 nor eviction under section 48(4) L.R.C. is leagally feasible and that Mr, Sable can be evicted from the unauthorised portion only.

In this connection the R.D. observes as follows :-

"According to R.L.A.'s opinion in para.4 of his memo dt. 30-11 37 , printed in the preamble of G.r. No. 5867/33,, dt. 3-3-38 ,sec. 66 L.R.C. has no application after non-agri. permission is granted. Penal action under sec. 66 L.R.C. dies not, therefore, seem to be legally feasible.The applicant ,it appears , cannot be evicted under sec. 48(4) L.R.C. also because thecondition prohibiting use of the land for residential purpose, to which the occupant has put, to , is not specifical ly paid down in the sanad. On the contrary, condition 5 in the second schedule appended to the sanad enables the oc upant to use the land for residential purpose. in his connection, attention is solicited to the remarks madeby the R.L.A. in para 1 of his memo. referred to above.

The proper course seems to be to take penal action under clause 6 of the sanad viz. removal of the offending portion of the land marked E F I J in thesketch on p. 5 of the case pps. The R.L.A. may, however, be requested u.o. to state whether the above view is correct , and also of any other remedy is open to Govt. "

The papers are accordingly referred to R.L.A.

V.v.k. 10/6/56/

-SC-

Office of the R.L.A.

Bombay Land Revenue Code, Section 48(4)

The view taken by R.D. is correct . Removal of only the offending part of thestructure can be ordered and no other penalty can be imposed.

Id/- P.M.L.
dt/- 22/9/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9000, dated the 22nd Septmeber 1948.

V.v.k. 10/6/56/

5C.